

176/

On the United States Patent and Trademark Office

Appn. Number: 09/641,410
Appn. Filed: August 18, 2000
Date Due: June 9, 2004
Applicant: Alice Mary O'Donnell Kiely
Title: Edible Supports for Comestibles with Optional,
Edible Mess Guards and Drip Guards
Examiner/GAU: Stephen Weinstein/1761

Yorktown Heights, NY, June 8, 2004

Amendment D

Assistant Commissioner for Patents
Washington, District of Columbia 20231

Sir:

In response to the Office Action mailed March 9, 2004
Applicant respectfully requests to swear behind references patent
6,177,110 to Chan (June 23, 1998), and patent 6,054,158 to Hart
et al., (April 25, 2000) to eliminate these two references in the
above application. Applicant attests that these two patents are

not prior art and respectfully asks the Patent and Trademark Office to take the following documents under consideration in the matter of Applicant's pending application:

Applicant respectfully submits the following five exhibits of evidence of conception, building and testing of the above invention, with diligence and good faith, prior to Chan and Hart et al., in order to eliminate these references. Being listed by earliest date, they are:

- 1) **Exhibit 1** is a Disclosure Document of Applicant, dated May 30, 1994, and stamped by the Patent and Trademark Office on July 5, 1994 with the serial number 357149, which is entitled "Edible Ice Cream Pop Sticks and "Chewable Ice Cream Pop Sticks." the page marked as "3" notes under Views C and D, number 8 recites: "chocolate covered candy bar, cookie bar, (white or brown) or gum stick inside the ice cream pop" number "9" recites: "chocolate covered candy bar, regular or in view D slenderized (1 5/8 oz chocolate covered caramel bar used in prototype pictured in view C)"

These candy bars and cookie bars [#8 , chocolate covered candy bar, cookie bar, (white or brown)....] are composite confection bars.

- 2) **Exhibit 2** is a letter from Applicant, dated September 30, 1994, addressed to the Commissioner of Patents and Trademarks, requesting the classification of the above invention. This letter is comprised of drawings and discussion of the above invention. Page 2 under MODE OF OPERATION recites: "The EDIBLE POP STICK" works like a regular popsicle stick in that it is inserted into the ice cream pop (or facsimile) and gives the consumer something to hold and support their portable ice cream, frozen yogurt or similar confection while they eat it. It's original feature is that it can be consumed after, or during the eating of the confection and the whole popsicle can be eaten." (Page 2, p. 2) Page 2, p. 1 recites:

"It consists of an elongated and slenderized candy bar or cookie bar (which may be flattened in part [upper portion] or entirely) such as an elongated and slenderized Milky Way Bar, Three Muskateers Bar, Carmallo Bar, or Twix Cookie Bar, (as an example but not excluding a good many other candy or cookie bars....."

Applicant would like to point out that Milky Way Bars are composite candy bars. Applicant at this time, September 30,

1994, had already invented, reduced to practice, and tested edible composite candy supports for popsicles, for "a longer lasting treat in which ice cream (or facsimile) is combined with a candy or candy/cookie confection and can be eaten in it's entirety." (page 2, p. 3)

- 3) **Exhibit 3** is a response to the letter of Exhibit 2, from the Patent and Trademark Office, Dated October 28, 1994 relating that the invention is in Class 426, subclass 139, and includes 151 patents.

- 4) **Exhibit 4** is a letter dated on January 24, 1995 addressed to the patent agent firm of Goldstein and Associates in Staten Island, New York. This was correspondence discussing Applicant's invention, above. Page 1, p. 6 - page 2, p. 1 recites: "As far as the content of the edible popsicle stick, I would hope that any of the chocolate candy bar companies such as, Milky Way, Three Musketeers, Caramello etc. and any of the cookie bar companies such as the ones that make Twix and Kit Kat and also Twizzlers may be interested. "I have made popsicles with edible sticks from all of the above mentioned and they work well and the children enjoy them."

Again, Milky Way Bars are composite candy bars and were successfully used to support edible frozen confections.

(N.B. The "children," in the exhibits are my children only, who abided by my [Applicant's] wish and never mentioned the new confection outside of our home.)

- 5) **Exhibit 5** is a subsequent letter addressed to Goldstein & Associates, (see Exhibit 4), dated February 1, 1995, requesting a patent search be done for Applicant's invention, above, and an enclosed check in the amount of \$200.00 to cover the cost.

This letter shows expense and diligence in moving the invention forward.

- 6) **Exhibit 6** is Applicant's Disclosure Document dated July 4, 1996, entitled "Edible Ice Cream Pop Sticks and Chewable Ice Cream Pop Sticks." It has a serial number of 403049, and was received by the Patent and Trademark Office on July 29, 1996. This Disclosure Document notes, "Their [children] favorites among the ones I made were ice cream or pudding pops with edible sticks made of Milky Way bars tm, cut in half lengthwise, Twix tm cookie bars, Three Musketeers tm, cut in half lengthwise, charleston Chew tm, Kit Kat tm,

Heath bars tm, and Caramallo Bars tm. Just about any chocolate covered candy bar works, even those made with dense marshmallow, nuts or peanut butter. ... Slenderized granola bars also work well."

Milky Way Bars and Heath Bars are composite candy bars used to make Applicant's prototypes.

Furthermore, Applicant's Document Disclosure with Serial Number 357149 -(1994) above, and Document Disclosure with Serial Number 403049 -(1996) above, show a flat surface on the two tops of Applicant's edible, supported frozen confections, in figures C and D, for standing upright on their ends. Applicant has shown and used this freestanding feature on a composite candy support and a composite cookie support at this time, prior to the earliest effective reference date of Hart et al., his filing date, June 23, 1998.

- 7) **Exhibit 7** is a Disclosure Document dated May 1, 1999, stamped by the Patent and Trademark Office on May 6, 1999, entitled, "Edible Support for Frozen and Non-Frozen Comestibles with Optional Edible Messgard for the Fingers" Page 1, under Description: notes, "This invention provides

edible support to frozen and non-frozen confections of many differing orientations and can also provide support to these confections for allowing them to be placed on a table top if the user wishes to temporarily put it down between bites or serve it on a plate for a place setting." Page 2, of the Disclosure, under Some Examples.... recites: "any durable comestible that is sealed from moisture or is itself moisture resistant and of sufficient size and density to support the comestible (which is to be held by the fingers or situated on a flat surface) can be used as an edible support."

Exhibit 7 also shows that Applicant had used a freestanding supported comestible at this time. Although, this document is dated after Hart's earliest reference date, his filing date of June 23, 1998, Applicant's 1999 Disclosure Document was written prior to the publishing date of Hart et al.'s patent, and gives credence to Exhibits 1 and 6.

SUMMARY:

Applicant submits that she has conceived of using a composite candy support for a frozen comestible prior to the effective date of the cited reference, Patent Number 6,177,110, to Chan (June

23, 1998). Applicant had conceived, built and tested composite candy supports for frozen comestibles, and has an earlier reference date of May 30, 1994, in practicality before September 30, 1994.

Applicant also submits that she conceived, reduced to practice and tested the freestanding feature used with composite candy and cookie supports prior to patent 6,054,158 to Hart, et al.

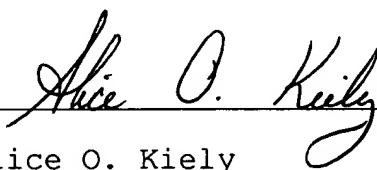
(Applicant had used 3-ounce (88.7ml) plastic disposable cups, made by SOLO tm of Urbana, Illinois [UPC code 0 4116528010 4]. These cups were 3/4 filled. Lengthwise cut composite candy bars, such as Milky Way bars, Snickers, and Baby Ruth Bars were then covered with melted chocolate on their open sides and let to harden (or refrigerated to hasten hardening). The supports were then placed in the cups of softened ice cream. Eight at a time were placed upside down on a tray in the freezer (bottom of the cups down, with sticks pointing upward). These cups have a flat bottoms, are a thin plastic, stand upright in the freezer and are disposable.

Applicant successfully built and tested composite candy supports for frozen comestibles and also created freestanding prototypes of these supported frozen comestibles, prior to the effective date of these two references and, therefore, respectfully

requests reconsideration and withdrawal of the references to Chan and Hart et al., from her pending application.

Oath

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.



Alice O. Kiely